

Withdrawn



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 465

AMENDMENT NO. A8
(to be filled in by
Principal Clerk)

H465-ATG-40 [v.4]

Page 1 of 3

Amends Title [NO]
Third Edition

Date _____, 2015

Senator Smith-Ingram

1 moves to amend the bill on page 9, line 6, by rewriting the line to read:

2
3 "SECTION 6.(b) Chapter 15A of the General Statutes is amended by adding a new
4 Article to read:

5 "Article 84C.

6 "Treatment of Pregnant Prisoners and Detainees.

7 "§ 15A-1369.10. Definitions.

8 As used in this Article:

- 9 (1) "Correctional institution" means any unit of the State prison system, local
10 confinement facility, juvenile detention facility, or other entity under the
11 authority of any State or local law enforcement agency that has the power to
12 detain or restrain a person under the laws of this State.
- 13 (2) "Corrections official" means the official that is responsible for oversight of a
14 correctional institution, or that official's designee.
- 15 (3) "Detainee" includes any person detained under the immigration laws of the
16 United States at any correctional facility.
- 17 (4) "Extraordinary circumstance" means a substantial flight risk or some other
18 extraordinary medical or security circumstance that dictates restraints be
19 used to ensure the safety and security of the prisoner or detainee, the staff of
20 the correctional institution or medical facility, other prisoners or detainees,
21 or the public.
- 22 (5) "Labor" means the period of time before a birth during which contractions
23 are of sufficient frequency, intensity, and duration to bring about effacement
24 and progressive dilation of the cervix.
- 25 (6) "Postpartum recovery" means, as determined by a woman's physician, the
26 period immediately following delivery, including the entire period a woman
27 is in the hospital or infirmary after giving birth.
- 28 (7) "Prisoner" means any person incarcerated or detained in any facility who is
29 accused of, convicted of, sentenced for, or adjudicated delinquent for,
30 violations of criminal law or the terms and conditions of parole, probation,
31 pretrial release, or diversionary program.



* H 4 6 5 - A T G - 4 0 - V - 4 *

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

House Bill 465

Withdrawn

AMENDMENT NO. A8

(to be filled in by
Principal Clerk)

H465-ATG-40 [v.4]

Page 2 of 3

1 (8) "Restraints" means any physical restraint or mechanical device used to
2 control the movement of a prisoner or detainee's body or limbs.

3 **"§ 15A-1369.11. Restraint of prisoners and detainees.**

4 (a) A correctional institution shall not use restraints on a prisoner or detainee known to
5 be pregnant, including during labor, transport to a medical facility, delivery, and postpartum
6 recovery, unless the corrections official makes an individualized determination that the prisoner
7 or detainee presents an extraordinary circumstance, except that:

8 (1) If the doctor, nurse, or other health professional treating the prisoner or
9 detainee requests for medical emergency reasons that restraints not be used,
10 the corrections officer accompanying the prisoner or detainee shall
11 immediately remove all restraints.

12 (2) Under no circumstances shall leg or waist restraints be used on any prisoner
13 or detainee who is in labor or delivery.

14 (b) If restraints are used on a prisoner or detainee pursuant to subsection (a) of this
15 section:

16 (1) The type of restraint applied and the application of the restraint shall be
17 accomplished in the least restrictive manner necessary.

18 (2) The corrections official shall make written findings within 10 days as to the
19 extraordinary circumstance that dictated the use of the restraints. These
20 findings shall be kept on file by the correctional institution for at least five
21 years and be made available for public inspection, except that no
22 individually identifying information of any prisoner or detainee shall be
23 made public under this Article without the prisoner or detainee's prior
24 written consent.

25 **"§ 15A-1369.12. Enforcement.**

26 (a) Notwithstanding any relief or claims afforded by federal or State law, any person
27 who has been restrained in violation of this Article may file a complaint within one year of the
28 occurrence of the violation. If the complainant is no longer in the custody of the correctional
29 institution, has exhausted the correctional institution's established grievance procedures or
30 protocols, or the correctional institution has not responded to a complaint within 120 days, the
31 complainant may institute suit in superior court.

32 (b) Any correctional institution found to have violated any provision of this Article or
33 any rule adopted under this Article shall be civilly liable to the person restrained in violation of
34 this Article. A court or adjudicatory body may award punitive damages per incident. A court or
35 adjudicatory body may further award attorneys' fees, litigation costs, and compensatory
36 damages.

37 (c) Nothing in this Article shall prevent a woman harmed in violation of this Article
38 from filing a complaint under any other relevant provision of federal or State law.

39 (d) Notwithstanding the provisions of G.S. 150B-1(d), the Division of Adult Correction
40 and all local governments that operate correctional institutions in this State shall develop rules
41 pursuant to this Article and shall inform prisoners and detainees of those rules developed upon
42 admission to the correctional institution, include policies and practices in compliance with the
43 provisions of this Article in any prisoner handbook, and post those policies and practices in

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 465

Withdrawn

AMENDMENT NO. A8
(to be filled in by
Principal Clerk)

H465-ATG-40 [v.4]

Page 3 of 3

1 locations in the correctional institution where such notices are commonly posted, including
2 common housing areas and medical care facilities.

3 (e) The Division of Adult Correction, and any local confinement facility, as applicable,
4 shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by May
5 1 of each year on every instance in which a pregnant prisoner or detainee has been subjected to
6 the use of restraints as defined in this Article. These reports shall not contain any information
7 identifying an individual prisoner or detainee and shall be made available for public
8 inspection."

9 **SECTION 6.(c)** All correctional facilities in the State shall develop the rules
10 mandated under this act within 30 days of the date this act becomes law and shall inform
11 prisoners and detainees within their custody of those rules within 60 days of the date this act
12 becomes law.

13 **SECTION 6.(d)** Subsection (a) of this section becomes effective on December 1,
14 2015. Subsections (b) and (c) of this section are effective when this act becomes law."
15
16

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____